

Joe P. Josephson, Esq.
Alaska Bar No 6102018
Attorney for Plaintiff
912 W. 6th Avenue
Anchorage, AK 99501

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE**

JAMES HARVEY,

Plaintiff,

v.

STATE OF ALASKA,
DEPARTMENT OF
CORRECTIONS; DEAN
WILLIAMS, Commissioner,
DEPARTMENT OF
CORRECTIONS; and
SHERRIE DAIGLE,
Director of the
Professional Conduct Unit,

Defendants.

COPY
Original Received

OCT 26 2018

Clerk of the Trial Courts

Case No. 3AN-18-_____ CIVIL

COMPLAINT

Plaintiff, JAMES HARVEY, for his complaint against the three defendants, (STATE OF ALASKA, DEPARTMENT OF CORRECTIONS; DEAN WILLIAMS, in his capacity as the Commissioner of the DEPARTMENT OF CORRECTIONS, and SHERRIE DAIGLE, as Director of the "Professional Conduct Unit", an organization

Harvey v. SOA, DOC, et al.

Complaint

Page 1 of 14

within the DEPARTMENT OF CORRECTIONS), alleges (by and through his attorney, Joe P. Josephson, Alaska Bar number 6102018), as follows:

Part One. General Allegations Applicable to Each Claim for Relief.

1. Plaintiff, JAMES HARVEY, is now, and has been at all pertinent times, a resident of the State of Alaska, in the Third Judicial District.

2. Plaintiff was and still is employed by the ALASKA DEPARTMENT OF CORRECTIONS, as a Correctional Officer, at all pertinent times.

3. On January 28, 2016, defendant DEAN WILLIAMS became the Commissioner of the DEPARTMENT OF CORRECTIONS, and he has served as such ever since then.

4. Defendant SHERRIE DAIGLE became the Supervisor of the "Professional Conduct Unit", within the DEPARTMENT OF CORRECTIONS when she was appointed to that position by defendant DEAN WILLIAMS, on or about September 1, 2016, and she has served as such ever since then.

5. At all times relevant, plaintiff was (and still is) a Correctional Officer employed at the Goose Creek Correctional Center ("GCCC"), a correctional facility operated by the DEPARTMENT OF CORRECTIONS.

6. Correctional Officers, including plaintiff, necessarily put their faith in the management of the DEPARTMENT OF CORRECTIONS to ensure that threats of

violence against their persons are taken seriously and acted upon appropriately. The DEPARTMENT OF CORRECTIONS and its managers and supervisors are obligated to make a good faith effort to keep its employees safe, especially when credible threats are brought forward or ascertained.

7. On or about the 14th day of March, 2018, plaintiff was working within the Delta Housing Unit at the GCCC. Plaintiff works a rotating schedule (seven days on/seven days off). On March 14, 2018, plaintiff was working a night shift scheduled to start at 6:00 p.m. and to end at 6:00 a.m.

8. Correctional Officers are responsible for maintaining safety and security in the DEPARTMENT OF CORRECTIONS's institutions at all times.

9. There are up to 128 inmate beds in each GCCC general population ("GP") housing unit. ("GP" refers to those inmates who have the security classification to intermix with other inmates). The Delta Housing Unit, where plaintiff was working on March 14, 2018, is a GP housing unit which, at that time, housed over 100 inmates.

10. On or about March 12, 2018, the DEPARTMENT became aware that an inmate had ordered a "hit" (i.e., an impending physical assault) on plaintiff and, furthermore, that one or more than one of the inmates was, or were, involved in

a conspiracy to execute the planned "hit" against plaintiff while he would be at work.

11. Inmate Keith J. Ferguson (hereinafter called "Inmate Ferguson") was housed in the Delta Housing Unit at the time of the assault (*i.e.*, on March 14, 2018) described in this complaint. Inmate Ferguson was incarcerated at the GCCC as a result of his guilty plea and conviction in 2015 for a Class A Felony (Robbery in the First Degree, armed with Deadly Weapon). Inmate Ferguson has since been charged with (and has pled guilty to) another crime (Assault in the Fourth Degree, Reckless Injury), a Class A Misdemeanor, for the assault upon the plaintiff described below in paragraph 16.

12. As alleged above in paragraph 10, on or about March 12, 2018, approximately two days prior to the assault upon plaintiff, the DEPARTMENT was informed and advised of a planned attack against the plaintiff intended to be carried out by one or more than one of the inmates.

13. Notwithstanding that information and advice, the DEPARTMENT failed to move plaintiff to a different housing unit, failed to inform plaintiff of the risk of serious injury at the hands of an inmate in the Delta Housing Unit, and failed to take any other action or precaution to protect plaintiff from bodily harm.

14. To the contrary, the DEPARTMENT actively ensured that plaintiff would *not* be protected and could *not* protect himself by ordering and directing one or more of its employees *not* to tell plaintiff, or plaintiff's Shift Commander, that an attack against the plaintiff had been planned or threatened. The defendants had been informed that the plaintiff had been singled out and marked for assault because he was vigorously and conspicuously trying to eradicate drug trafficking within the GCCC. In short, the plaintiff had become a bane to the drug traffickers.

15. On information and belief, the defendants intentionally and deliberately and irresponsibly chose (a) to expose the plaintiff to a special and foreseen risk of physical harm, and (b) not to warn the plaintiff and (c) not to otherwise prevent the attack from taking place.

16. On March 14, 2018, the plaintiff, unaware of the particular danger and risks of assault resulting from the scheme of one or more than one inmate, was performing his customary security duties on the top tier of the Delta Housing Unit within the GCCC. (The Delta Housing Unit has two tiers, an upper tier and a lower tier). Two sets of stairs permit foot travel between the two tiers.

17. As plaintiff was speaking with the inmate in cell number 59, Inmate Ferguson approached him from behind and, without warning or provocation, struck the plaintiff in the right temple with his fist.

18. Inmate Ferguson attempted to strike the plaintiff again, and despite the plaintiff's efforts to avoid being struck and to create distance between himself and Inmate Ferguson, Inmate Ferguson succeeded in renewing his assault upon the plaintiff's person.

19. After Inmate Ferguson grabbed and ripped the plaintiff's shirt, and dislodged the plaintiff's ear piece to his security radio, the plaintiff managed to discharge his pepper spray, Oleoresin Capsicum ("OC") in the direction of Inmate Ferguson.

20. OC is a non-lethal deterrent which Correctional Officers carry with them in a small spray can while conducting day-to-day duties within correctional institutions.

21. By discharging OC, plaintiff was able to descend to the first floor of the Delta Housing Unit. With over 100 other inmates in the Delta Housing Unit, a primary concern of the plaintiff was the safety of the new recruit (a Trainee Officer) whom he was training. Therefore, he instructed the recruit to lock herself into a secure room, referred to as "the Core", attached to the Delta Housing Unit. Meanwhile, Inmate Ferguson continued to pursue the plaintiff with the intent to do further harm.

22. The assault upon plaintiff was finally stopped because the recruit and the plaintiff were able to get inside "the Core" and shut the door even though Inmate Ferguson attempted to pursue the plaintiff inside.

23. As a direct, foreseeable, immediate and natural consequence of the blind-sided assault upon his person, plaintiff sustained injuries. Plaintiff was treated at the Emergency Room at the hospital immediately after the attack. His injuries have since led to multiple follow-up visits with his physician, weeks of physical therapy, extended treatment from and consultations with a spine specialist, and an MRI. Plaintiff remains under doctor's care and must undergo continued physical therapy *per* the recommendation of his physician.

24. Furthermore, as a direct, foreseeable, immediate and natural result of the violent attack described above, plaintiff suffers frequent severe headaches; loss of range of motion; soreness in his neck and back; loss of sleep due to pain; and emotional distress and anxiety, the nature and extent of these damages to be proved at trial.

25. Ever since the attack, plaintiff, through his union representative, Alaska Correctional Officers Association ("ACOA"), has repeatedly communicated with the DEPARTMENT, asking the DEPARTMENT to admit and disclose the fact that it received a credible, imminent threat of violence against plaintiff, prior to March

14, 2018. Plaintiff and ACOA wish to ensure his future safety, confirm that no further threat of violence has been made against plaintiff, and obtain the defendants' assurance that in the future the DEPARTMENT will act appropriately and in a timely manner to protect the plaintiff, and all other Correctional Officers, against imminent and credible threats of violence. To date, the DEPARTMENT and the individual defendants have wrongfully and intentionally failed to acknowledge or disclose that the DEPARTMENT received an imminent threat of violence against the plaintiff prior to the assault described above.

Part Two. *Plaintiff's First Claim for Relief – Intentional Infliction of Emotional Distress.*

26. Plaintiff incorporates, in this, his First Claim for Relief, each and every allegation set forth above in paragraphs 1 through 25, as if those paragraphs were expressly reiterated herein.

27. The defendants intentionally and unreasonably subjected the plaintiff to emotional distress which they recognized, or should have recognized, would be a likely consequence of the foreseeable, and imminent, bodily harm threatened against plaintiff which the defendants had reason to anticipate but about which they never warned the plaintiff.

28. The special relationship between a Correctional Officer and his Supervisors creates a duty on the later to affirmatively warn the Correctional Officer about special and peculiar risks of imminent physical and emotional harm arising from reported threats against an individual Officer.

29. The defendants breached that duty.

30. As a direct, immediate, and natural consequence of the defendants' breach, the plaintiff suffered, and continues to suffer, injuries including emotional distress.

31. The defendants deliberately failed and refused, and also neglected to:

a. take action to protect the plaintiff from the imminent threat of violence made specifically against him;

b. inform the plaintiff, or his immediate supervisors, that threats had been made; and

c. intercede to prevent other employees of the DEPARTMENT from warning the plaintiff and from interceding to protect the plaintiff.

32. As a natural, foreseeable, and proximate consequence of the defendants' inactions and actions complained of herein, including their failure to forewarn the plaintiff or his immediate supervisors of the likelihood of the

threatened attack taking place, so as to make them aware of the anticipated imminent attack, plaintiff has suffered and continues to suffer emotional distress, the nature and extent of which to be proved at trial.

Part Three. Plaintiff's Second Claim for Relief – Fraudulent Concealment.

33. Plaintiff incorporates by reference each and every allegation set forth above, in paragraphs 1 through 32, as if the said allegations were expressly reiterated in this, his Second Claim for Relief.

34. The DEPARTMENT suppressed, and continues to suppress, the fact that it had been made aware of an imminent threat of violence against the plaintiff. The DEPARTMENT, as the plaintiff's employer, had an affirmative duty to warn the plaintiff that it was aware of a credible and imminent threat of violence against his person.

35. Defendant SHERRIE DAIGLE is the supervisor of the Professional Conduct Unit ("PCU"). The avowed purpose of the PCU, according to DOC Policy & Procedure 1110.01, Professional Conduct Unit Operations, is to "demonstrate commitment to transparency and self-examination to continually improve community safety, employee safety, public service and fulfilling the obligations to the State of Alaska (with regard to) secure confinement, reformatory programs, community service and rehabilitation." (Underlining added here).

36. On or before March 12, 2018, defendant DAIGLE was informed of the allegation that a major lapse in safety had occurred at the GCCC, including but not limited to a specific allegation that prison management knew of a pending inmate assault upon the plaintiff and had failed to act so as to protect plaintiff from becoming the victim of such assault. Despite this information, and despite the avowed mission of the PCU, defendant DAIGLE failed, refused and neglected to investigate these allegations and to investigate how the security failures at the GCCC, and the resulting physical and emotional injuries suffered by plaintiff, happened.

**Part Four. Plaintiff's Third Claim for Relief – Breach of the
Covenant of Good Faith & Fair Dealing.**

37. Plaintiff incorporates herein by reference, as if they were expressly reiterated in this, his Third Claim for Relief, each and every allegation set forth above in paragraphs 1 through 36.

38. The defendants' failure to warn or protect plaintiff from an imminent threat of assault against him by an inmate, and their deliberate suppression of the fact that they had received advance warning that the imminent threat had been uttered, and that the threat was particularized against the plaintiff, constituted

breaches of the implied covenant of good faith and fair dealing, which applies to all employment relationships in Alaska.

Part Five. Plaintiff's Fourth Claim for Relief - Injunctive Relief.

39. Plaintiff incorporates herein by reference, as if they were expressly reiterated in this, his Fourth Claim for Relief, each and every allegation set forth above in paragraphs 1 through 38.

40. Recent studies have suggested that correctional officers work under dangerous conditions that can threaten their safety and wellness. The modern-day correctional officer is required to interact with and supervise individuals in a dangerous environment. **See** Attachment No. 1, "Correctional Officer Safety and Wellness Literature Synthesis", by Frank Ferdik and Hayden Smith (National Institute of Justice, July, 2017).

41. There have been recent disclosures of the fact that in Alaska certain individuals with dangerous mental health problems, are becoming prison inmates rather than being treated in psychiatric hospitals.

42. Part of the avowed mission of the Department of Corrections and its management, including the Professional Conduct Unit, in the words of defendant WILLIAMS himself, is to insure that investigating assaults against officers, and prosecuting the offenders responsible, remains a top priority.

43. It also is, or ought to be, of paramount performance that possible, prompt, and appropriate action is, whenever possible, taken to prevent assaults upon officers in the first place.

44. Plaintiff, for himself and others similarly situated, has no adequate remedy at law, because the recovery of money after suffering injury in a potentially life-threatening event is not the equivalent of protecting one's health and safety, and the enjoyment of life. Therefore, the problem of assuring better safety for correctional officers requires and merits injunctive relief in addition to monetary relief.

45. Accordingly, the Court should enter a preliminary and a permanent injunction requiring the defendant DEPARTMENT, its officers, managers, and supervisors, including the individual defendants and the Professional Conduct Unit, whenever information is obtained of a threatened or impending assault upon an individual officer, to *either* promptly notify the officer that he or she has been threatened *or*, with or without explanation, to change the officer's schedule and/or duty station, thus preventing or mitigating a known or suspected particularized danger presented by the threatened harm or impending assault upon that individual officer.

WHEREFORE, plaintiff HARVEY prays for the following relief:

- a. For a money judgment against the defendants, and each of them, in such amount as the court or jury shall find proper; and
- b. For the award of prejudgment and post-judgment interest, attorney fees and costs; and
- c. For injunctive relief as described in paragraph 44 above; and
- d. For the recovery of such other relief as the Court may find just and equitable.

DATED this 25th day of October, 2018, at Anchorage, Alaska.



Joe P. Josephson, Attorney for Plaintiff
Josephson Law Offices, LLC
Tel. (907) 276-0151
Facsimile (907) 276-0155
Alaska Bar no. 6102018
joepjosephson@gmail.com